IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5031 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIPUL M MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR DIVYESH SEJPAL for Petitioner

RULE SERVED BY DS for Respondent No. 1

MR SP HASURKAR for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/01/2000

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner before this Court is a Government

servant serving as an Assistant Registrar in the Department of Co-Operative Societies. At the relevant time, he was serving as an Assistant Director [Training] on deputation under the Commissioner, Cottage & Village Industries Department - the respondent no. 3 herein. It appears that while he was serving on deputation, certain adverse entries have been made in his service record for the year 1996-97. The said adverse entries have been communicated to the petitioner under the communication dated 6th April, 1998. The petitioner's case for further promotion to the post of Deputy Registrar was considered, however, on account of the above referred adverse entries, the petitioner was found unfit for promotion and has accordingly been not selected. Several persons, junior to the petitioner, have been promoted to the post of Deputy Registrar under the order dated 11th November, 1998. Feeling aggrieved, the petitioner has preferred the present petition.

3. It is contended that the `adverse entries' for the year 1996-97 have been communicated belatedly, the said entries deserve to be expunged. In any case, on account of belated communication, the said entry has become ineffective and should not have been taken into consideration while considering the petitioner's case for promotion.

4. Mr. Sejpal has relied upon the Government Circular dated 27th June, 1981 and the Government Resolution dated 31st March, 1989 issued in this behalf. He has also relied upon the judgment of this Court in the matter of C.N Chavda v. Director General of Police, Gujarat State [1992 (1) GLH 209].

5. Under the Circular dated 27th June, 1981, the Government has substituted paragraph 14 (2) of the Government resolution dated 8th March, 1969. The replaced paragraph 14 (2) provides, inter alia, that a Government servant should at no time be kept ignorant of remarks in his CR which point out to his inefficiency in his performance and skill, etc; that such adverse remark should therefore be communicated to the officer reported upon within six weeks from the completion of the CR. Under the Government resolution dated 31st March, 1989, a consolidated instruction has been issued to the concerned authorities with regard to the various instructions issued in respect of recording of, and communication of the CR. Paragraph 4 of the said instruction provides that in case the officer concerned fails to submit his self-appraisal by 20th April, the concerned officer should proceed further to make its report. Mr. Sejpal,

has therefore, contended that whether the petitioner has submitted his self-appraisal report or not after 20th April, 1997, it was the duty of the reporting officer to make his report and if any adverse entries were made in such report, the same should have been communicated to the petitioner within six weeks therefrom. In the present case, it is indisputable that the adverse entry in question has been communicated to the petitioner almost a year later. The said entries should, therefore, fall into insignificance and ought not to have been taken into consideration while considering the case of his promotion.

6. In the matter of C.N Chavda [Supra], the adverse entry in question was communicated to the petitioner therein after about 13 months. The Court held that the said communication was grossly belated and the same, therefore, cannot be considered. The Court considering the judgment of the Supreme Court in the matter of State of Haryana v. Shri P.C Wadhwa, IPS, Inspector General of Police & Anr., [1987 SC 1201] held that, `thus according to the Hon'ble Supreme Court, the proviso relating to communication of adverse entries though directory in nature is required to be complied with substantially.'

7. The petition is contested by the respondents. Joint Director, Cottage & Rural Industries has filed the counter affidavit. It is submitted that since the reporting officers for the year under consideration were different, two separate reports were made - one from 1st April, 1996 to 31st October, 1996 and the other from 1st November, 1996 to 31st March, 1997. The original records have been produced before the Court. It is contended that the petitioner had made his self-appraisal for the entire year on 20th August, 1997. The reporting officers for the later part and the former part had made their reports on 27th August, 1997 and 14th November, 1997 respectively. The said reports having been submitted to the reviewing authority, the reviewing authority had made his report on 29th November, 1997 and 19th December, 1997 respectively and since then, the said entries were communicated to the petitioner on 6th April, 1998.

8. The Government resolution dated 31st March, 1989 sets out a detailed procedure required to be followed for maintaining confidential reports of the government servants. The officer concerned is first required to make a self-appraisal report by 20th April of the year-following the year under consideration. Thereafter, the reporting officer is required to make his report which is required to be reviewed by the reviewing

authority. In my view, the confidential report can be said to be complete only after the reporting officer and the review authority make their respective reports. The period of six weeks referred to in the Government circular dated 27th June, 1981 can be computed only from the date the CR is completed. Thus, the contention that the adverse entry should be communicated within six weeks from the last date of the year under consideration is misconceived and requires to be rejected. The said six weeks can be computed only after the CR is completed i.e., the reviewing authority makes his endorsement. Besides, as held by the Hon'ble Supreme Court and this Court, that these instructions are directory, though they are required to be complied with substantially, some delay in communication of the adverse entries shall not affect such entry. However, if there is a gross delay in communication which has prejudiced the Government servant concerned, the same may fall into insignificance.

9. In the present case, it is undisputed that petitioner had failed to make his self-appraisal report by 20th April, 1997 but had made such report on 20th August, 1997. Since then, the reporting officers and the reviewing officers have acted promptly and cannot be said to have delayed the matter. True, that after completion of the confidential report on 19th December, 1997, the adverse entries have not been communicated within six weeks as expected but have been communicated after more than 12 weeks. However, the said delay would not vitiate the adverse entries as contended. In the matter of C.N Chavda [Supra] as recorded by the Court, the entries were communicated nearly 13 months after the date of CRs. That being not the case here, the delay of 6 weeks, in my view, would not vitiate the entry in question.

10. Mr. Sejpal, at this stage, seeks leave to withdraw this petition. Leave is granted. Petition is disposed of as withdrawn. Rule is discharged. Parties shall bear their own costs.

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Prakash*